



2002

North Dakota Office of State Tax Commissioner **Corporation Income Tax**

Rick Clayburgh
Tax Commissioner

Form 40
Form 40-UT
Form 40-ES

Need help?
Visit our
Web site at:

WWW.
ndtaxdepartment.
com

Download income and
business tax forms
anytime - day or night!

Get answers to your
tax questions through
our Frequently Asked
Questions.

E-mail your tax
questions:

corptax@state.nd.us

Check it out today!



Forms and Instructions

As you prepare your North Dakota corporation income tax return, please consider the following:

- **Who Must File** Corporations engaged in business in North Dakota or having sources of income from North Dakota must file a North Dakota Corporation Income Tax Return, Form 40.

A corporation which files a Federal Form 1120S as a small business corporation must file a North Dakota Small Business Corporation Income Tax Return, Form 60.

Financial institutions (*See North Dakota Century Code ch. 57-35.3*) located or doing business within North Dakota must file a North Dakota Financial Institution Tax Return, Form 35.

Please remove label and attach it to your return



New for 2002

- **A new payment voucher, for submitting payment of tax when an extension of time to file has been approved, is on our Web site. North Dakota Form 40-EXT is now available for use when a corporation desires to avoid interest by paying the tax due for a return that will be filed by the extended due date. Click on Corporate Income, Forms, and select Form 40-EXT to download the payment voucher.**
- **Our Web site has been redesigned to help you navigate through the many options now available. Check out our site at www.ndtaxdepartment.com.**
- **Our corporate income tax forms have been redesigned to make better use of technology for processing the returns. Let us know what you think of the changes.**
- **Make a note of our new address: Office of State Tax Commissioner, 600 East Boulevard Avenue, Department 127, Bismarck ND 58505-0599.**



Special Reminders

- **We invite and encourage all corporations to take advantage of the Electronic Funds Transfer (EFT) program. We offer an Automated Clearing House (ACH) credit procedure to accept EFT payments for all corporate income tax related payments. More information is posted on our Web site under Corporate Income, Electronic Filing.**
- **Please be aware that signatures on all corporate income tax returns must be original signatures. We cannot accept returns with photocopied or other reproduced signatures.**

General instructions

Who must file

Corporations engaged in business in North Dakota or having sources of income from North Dakota must file a 2002 North Dakota Corporation Income Tax Return, Form 40.

For example, a North Dakota Form 40 must be filed by:

- Corporations, including business trusts, associations, and joint-stock companies;
- Cooperative corporations which distribute their net income through patronage dividends;
- Insurance companies which conduct business activities not subject to the North Dakota gross premium tax;
- Tax exempt organizations which have unrelated business taxable income; and
- Organizations which anticipate receiving a tax exempt status notification from the Internal Revenue Service, but have not, by the end of the taxable year, actually received such notification.

A corporation which files a Federal Form 1120S as a small business corporation must file a North Dakota Small Business Corporation Income Tax Return, Form 60.

Financial institutions (*See N.D.C.C. ch. 57-35.3*) located or doing business within North Dakota must file a North Dakota Financial Institution Tax Return, Form 35.

Due date

A calendar year corporation filing Form 40 must file on or before April 15 following the close of the calendar year.

A corporation reporting on a fiscal year basis must file on or before the 15th day of the fourth month following the close of the fiscal year. Use the 2002 Form 40 for fiscal years that begin in 2002 and end in 2003.

A cooperative must file on or before the 15th day of the ninth month following the close of the calendar or fiscal year.

Tax-exempt organizations required to file an income tax return to report unrelated business taxable income must file a corporation income tax return on or before the 15th day of the fifth month after the tax year ends.

Short period return

A corporation required to file a federal short period return must file a North Dakota short period return for the same taxable period. The North Dakota return is due on or before the 15th day of the fourth month following the close of the short period. If the due date of the short period federal return falls on a date after the 15th day of the fourth month following the close of the short period, contact the Office of State Tax Commissioner for information regarding the due date for the North Dakota return.

A corporation which terminates as a Subchapter S Corporation during the year, or a corporation which changes its annual accounting period, must annualize its North Dakota taxable income and prorate its state tax liability in the same manner as the federal tax liability is prorated.

Extension of time for filing

An extension of time to file a federal return is automatically accepted by North Dakota as an extension of time to file the state return.

A copy of the federal extension, Form 7004, must be attached to the state return when it is filed. If a copy of the federal extension is not attached, the return must be processed as a delinquent return.

The extension of time to file the North Dakota return is the same number of months as the extension of time to file the federal return.

A state extension to file may be obtained, even if a federal extension has not been requested, providing a written request is made to the Office of State Tax Commissioner prior to the due date of the North Dakota return.

If a corporation has an extension of time to file its North Dakota return, but has not prepaid its entire state tax liability by the regular due date of the return, extension interest at the rate of 12% per annum applies. A corporation which desires to avoid extension interest may make a voluntary state payment by the regular due date of the state return. The payment must be accompanied by a copy of the federal extension Form 7004, and North Dakota Form 40-EXT, indicating the appropriate name, address, and Federal Identification Number of the taxpayer corporation. Alternatively, a letter containing the above information along with a copy of the approved state extension of time to file may be submitted with the prepayment of tax due.

Payment of tax

If tax due (*including interest and penalty*) is less than \$5.00, payment need not be made. If tax is due, the total payment due must be paid at the time of, or before, the return is filed. Payment may be made with check or money order, made payable to the North Dakota State Tax Commissioner.

Payment may also be made by electronic funds transfer. Information regarding electronic payments can be found on the department's Web site at www.ndtaxdepartment.com, under Corporate Income, Electronic Filing.

Check the box on the line under Line 21b of Form 40, page 1, and fill in the date of the payment.

Attachments

A complete copy of the federal income tax return as filed with the Internal Revenue Service must be attached to Form 40.

Overpayments

Overpayments of income tax may be applied to the 2003 estimated tax (*minimum \$5.00*), or issued as a refund (*minimum \$5.00*).

A corporation may elect to have the overpayment credited to a 2003 estimated tax installment by circling the appropriate quarter on Form 40, page 1, line 22a.

Penalty and interest

The Office of State Tax Commissioner will notify the taxpayer of any penalty and interest owed on tax due and any interest accrued on a refund. If desired, penalty and interest may be computed on tax due and entered on the return by the taxpayer.

If the full amount of the tax is not paid by the due date, or extended due date, the current provisions for penalty and interest are:

- A penalty equal to 5% of the tax due or \$5.00, whichever is greater; and
- Interest computed at the rate of 1% per month (*or a fraction of a month*) of the tax due except the month in which the tax became due.

If the return is not filed by the due date (*or extended due date*), a penalty of 5% of the net tax liability or \$5.00, whichever is greater, applies for the month in which the return is due, with an additional 5% for each additional

month (or a fraction of a month) during which the delinquency continues, not to exceed 25% of the net tax liability.

If there is an overpayment on Form 40, page 1, interest at the rate of 1% per month accrues on the overpayment beginning forty-five days after the due date of the return (*without extension*) or after the date the return is filed, whichever date is later.

Incomplete return

All applicable lines on Form 40 must be completed. A return with incomplete lines or schedules, or with notations such as "see attached statement" or "available upon audit," is not properly filed and will be returned to the taxpayer.

Ratios and decimals

On all schedules where a ratio or decimal is called for, use 6 digits after the decimal point.

Where to file or obtain additional forms and instructions

Completed returns and written requests for information and forms should be mailed to the Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599.

Obtain North Dakota tax forms, send messages, and find other information on the Office of State Tax Commissioner's Web site at www.ndtaxdepartment.com.

Forms and instructions may also be obtained by calling 701-328-2046.

For the speech or hearing impaired, call Relay North Dakota at 1-800-366-6888 and ask for 1-701-328-2046.

Information at the source

Any corporation doing business in North Dakota which is required to file a Federal Form W-2 or 1099 must also file one with this state. For more information on the requirements and alternatives for satisfying those requirements, contact the Office of State Tax Commissioner.

Quick refund

A quick refund of overpaid estimated income tax may be requested by a corporation if the overpayment exceeds five hundred dollars (\$500) and the claim for quick refund is filed after the close of the taxable year but before the 15th day of the fourth month thereafter.

The form for the Quick Refund Of Estimated Income Tax For Corporations (*Form 40-QR*) must be obtained from the Office of State Tax Commissioner.

Estimated tax payments

If a corporation's estimated state income tax liability exceeds five thousand dollars (\$5,000) and its previous year's state income tax liability exceeded five thousand dollars (\$5,000), the corporation is required to make an estimated tax payment of at least one-fourth of the amount due on each of four prescribed dates.

Information regarding estimated tax payments is located at the back of this booklet.

Amended returns/federal audit changes

An Amended North Dakota Corporation Income Tax Return, Form 40X, must be filed if:

- An amended federal income tax return is filed;
- North Dakota income is changed as a result of a federal audit;
- A corporation's North Dakota income is changed as a result of a North Dakota net operating loss carryback;
- An error is discovered on a previously filed return;
- The corporation receives a refund of federal income tax which was deducted on a previously filed Form 40.

Information about amended returns can be found in N.D.C.C. §§ 57-38-38 and 57-38-40.

A current Form 40X and instructions can be obtained from the Office of State Tax Commissioner's web site at www.ndtaxdepartment.com.

Federalization

The North Dakota income tax law is perpetually "federalized" for the Federal Taxable Income starting point of the North Dakota Return, for taxable years beginning after December 31, 1988.

Method of corporation taxation

The North Dakota corporation income tax applies only to that portion of a corporation's taxable income which is derived from or attributable to sources within this state.

A nonapportioning corporation, i.e. a corporation whose business activity is conducted solely within North Dakota, computes North Dakota taxable income by adjusting its federal taxable income by North Dakota statutory adjustments.

An apportioning corporation, i.e. a corporation whose business activity is conducted both within and without North Dakota, computes North Dakota taxable income by adjusting its federal taxable income by North Dakota statutory adjustments and apportioning this adjusted taxable income using Schedule FACT, FACT-1, or CR (*Part II*) of Form 40.

A corporation engaged in a unitary business with one or more corporations (*irrespective of the country or countries in which the corporations conduct business*) must file using the combined report method.

A unitary business is a group of corporations which carries on activities, the component parts of which transfer value among themselves through the unities of ownership, operation and use.

- "Unity of ownership" means the group is under the common control of a single corporation, which is also a member of the group. Control exists when the single corporation owns, directly or indirectly, more than fifty percent of the voting stock of another corporation;
- "Unity of operation" means the group receives benefits from functional integration or economies of scale;
- "Unity of use" means the group of corporations contributes to or receives benefits from centralized management and policy formation.

Whether a group of corporations is engaged in a unitary business depends on the facts and circumstances of each case. If unity of ownership exists, any of the following facts or circumstances creates a presumption that the unities of operation and use exist; therefore, the corporations are engaged in a unitary business if:

- All activities of the group are in the same general line or type of business;
- The activities of the group constitute different steps in a vertically structured enterprise; or
- The group is characterized by centralized management.

Water's edge election

A corporation required to file its North Dakota return using the worldwide unitary combined

report method may elect to use the water's edge method. The water's edge election must be made on the return as originally filed and is binding for five consecutive years. If the election is made, a corporation may not reduce taxable income by a federal income tax deduction.

A domestic disclosure spreadsheet must be obtained from and filed with the Office of State Tax Commissioner the first year the property, payroll, or sales in foreign countries exceed ten million dollars and total assets exceed two hundred fifty million dollars, and every third year thereafter provided the property, payroll, or sales in foreign countries exceed ten million dollars and total assets exceed two hundred fifty million dollars.

Specific instructions for Form 40, Page 1

Line 1 Income

Check the box for the reporting method used to complete the return and enter the income reportable under that method:

a. Single Corporate Entity

The single corporate entity method reports income or loss of only one incorporated business.

If the single corporate entity method is used for both North Dakota and federal purposes, enter the federal taxable income from:

- Federal Form 1120, line 30; or
- Federal Form 1120-A, line 26.

If the single corporate entity method is used for North Dakota purposes and the corporation is included in a consolidated Federal Form 1120, enter the corporation's federal taxable income before consolidating adjustments/eliminations from:

- A pro forma separate company federal income tax return, line 30; or
- The schedule showing gross income and deductions, which supports the consolidated federal taxable income.

Cooperatives and other business organizations using federal forms other than Federal Form 1120 must enter the federal taxable income from the appropriate form.

b. Combined Report Method

The combined report method is used if the corporation apportions its income from a unitary group of corporations.

This method reports total income or loss of all unitary corporations in the unitary group. (See *N.D. Admin. Code ch. 81-03-05.3*)

If the combined report method is used, enter the amount from the North Dakota Schedule WW, line 13 and attach the schedule to Form 40.

b1. 100% North Dakota Corporations Consolidated Return Using the Combined Report Method

Check the "100% North Dakota Consolidated Return" box **if the corporation is required** to file one consolidated North Dakota return using the combined report method.

Two or more corporations **are required** to file one North Dakota return using the combined report method if the corporations are affiliated as parent and subsidiary, are filing a consolidated federal tax return, and all corporations are operating solely within North Dakota.

If the box entitled "100% North Dakota Consolidated Return" is checked:

- Enter the amount from the North Dakota Schedule WW, line 13, and attach the schedule to Form 40; and
- Complete North Dakota Schedule CR, parts I through IV, and attach the schedule to Form 40.

b2. Apportioning Corporation Consolidated Return Using the Combined Report Method

Check the "Apportioning Corp Consolidated Return" box if the corporation is filing one consolidated North Dakota return using the combined report method.

Two or more corporations **may** file one North Dakota return using the consolidated return if the corporations are required to use the combined report method and more than one of the corporations has a filing requirement in North Dakota.

If box b2 entitled "Apportioning Corp Consolidated Return" is checked:

- Enter the amount from the North Dakota Schedule WW, line 13, and attach the schedule to Form 40; and
- Complete North Dakota Schedule CR, parts I through IV, and attach the schedule to Form 40.

c. Water's Edge Method

Check the "Water's Edge Method" box if the corporation is a member of a worldwide unitary group and elects to file a North

Dakota return using the water's edge method. (See *N.D. Admin. Code ch. 81-03-05.2*)

If the box entitled "Water's Edge Method" is checked, enter the amount from the North Dakota Schedule WE, line 11, and attach the schedule to Form 40.

If the corporation elects to use the water's edge method and is filing a consolidated North Dakota return, complete Schedule CR, parts I, II and IV, and attach the schedule to Form 40.

d. Other

Check the "Other" box if the corporation has received written permission from the Office of State Tax Commissioner to file a North Dakota return using a filing method other than those specified above.

Other filing methods are contained in N.D.C.C. § 57-38.1-18 (for example, separate accounting or a method using an apportionment factor different from that computed on Schedules FACT, FACT-1 or CR).

If the box entitled "Other" is checked, attach a copy of the letter granting permission to use, or requiring the use of, this filing method and a worksheet substantiating and explaining the computation of income. Enter the total income from this worksheet on Form 40, page 1, line 1.

Line 4 North Dakota apportionable income

If completing Schedule CR, enter the amount from Form 40, page 1, line 4 on Schedule CR, part I, line 4 (enter the same amount for each company) and complete all parts of Schedule CR.

Line 5 Apportionment factor

If a corporation has business income (See *N.D.C.C. ch. 57-38.1*) from activity solely within this state, enter 1.000000 on this line. Corporations not filing a consolidated return, enter the apportionment factor from Schedule FACT, line 14 or Schedule FACT-1, line 6. Corporations completing Schedule CR, must enter the apportionment factor from Schedule CR, part II, line 14a.

Line 7 Income allocated to North Dakota

Enter nonbusiness income allocated to North Dakota less related expenses. Nonbusiness income is allocated to North Dakota if the income is attributable to North Dakota.

Expenses must be attributed to nonbusiness income in a manner which fairly distributes all of the corporation's expenses to its various types of income.

Corporations completing Schedule CR must enter the total nonbusiness income for all corporations having activity within North Dakota.

Line 9 Federal tax deduction

Corporations completing Schedule FTD, enter amount from Schedule FTD, line 17.

Corporations electing water's edge method, enter zero on this line.

Corporations completing Schedule CR, enter the amount from Schedule CR, part III, line 17a.

Line 10 Exemption for new and expanding business

If the corporation received a new and expanding business exemption from the State Board of Equalization, enter the amount of exempt income computed pursuant to N.D. Admin. Code § 81-03-01.1-06.

Corporations completing Schedule CR, enter the exempt income for each corporation having an exemption and activity within North Dakota.

Line 11 Renaissance zone income exemption

If the corporation is claiming exempt income as a result of the Renaissance Zone Act, enter total amount of exemption from the summary part of Schedule RZ. Contact the Office of State Tax Commissioner at 701-328-2046 to obtain Schedule RZ.

Line 12 ND income after federal tax deduction and income exemptions

If the amount on line 12 is a loss, the loss may be carried back and carried forward for the same number of years as a federal loss of like-kind.

Election to forego loss carryback

However, regardless of the corporation's treatment of a federal net operating loss, the corporation may elect to forego the allowable carryback period and carry forward the entire state loss. To elect to forego the carryback period for a North Dakota loss, check the box in Question 10 on page 2 of Form 40. A

corporation must make this election on an original return that is timely filed for the year in which the loss was incurred.

If an election is not made, the loss must be carried back.

Additional information regarding loss carryback and loss carryforward provisions is contained in N.D.C.C. § 57-38-01.3(3) and N.D. Admin. Code § 81-03-05.1-07.

Line 13 North Dakota loss carryforward

The North Dakota loss carryforward allowed on the 2002 Form 40 is the amount of the accumulated loss less any previously deducted loss carryback or carryforward.

Attach a worksheet showing the accumulated loss, by year, less any previously deducted loss carryback or carryforward.

Corporations completing Schedule CR must enter the loss carryforward from all corporations having activity within North Dakota.

Line 15 Recapture of federal alternative minimum tax

Corporations completing Schedule AMT-R, enter amount from Schedule AMT-R, line 11.

Corporations completing Schedule CR, enter the amount from Schedule CR, part IV, line 11a.

Line 16 North Dakota taxable income

If the return reports a North Dakota loss on Form 40, page 1, line 12, or a North Dakota loss carryforward on Form 40, page 1, line 13, please complete lines 14-17.

Always complete line 16 by subtracting the amount on line 15 from the amount on line 14.

Line 20 Tax year 2002 estimated income tax payments

Enter the total 2002 estimated income tax payments. Also, enter any 2001 overpayment credited to the 2002 taxable year and any payment voluntarily made to the state with an extension of time for filing.

Line 21a Interest and penalty for balance due

The Office of State Tax Commissioner will notify the taxpayer of any penalty and

interest owed on tax due. If desired, penalty and interest may be computed by the taxpayer on tax due and entered on the return.

If the full amount of the tax is not paid by the due date, or extended due date, the current provisions for penalty and interest are:

- A penalty equal to 5% of the tax due or \$5.00, whichever is greater; and
- Interest computed at the rate of 1% per month (or a fraction of a month), of the tax due except the month in which the tax became due.

If the return is not filed by the due date (or extended due date), a penalty of 5% of the net tax liability or \$5.00, whichever is greater, applies for the month in which the return is due, with an additional 5% for each additional month (or a fraction of a month) during which the delinquency continues, not to exceed 25% of the net tax liability.

Line 22a Amount to be credited to year 2003

A corporation may elect to have the overpayment credited to a 2003 estimated tax installment by circling the appropriate quarter on Form 40, page 1, line 22a to specify the particular installment to which the amount credited is to be applied.

Specific instructions for Schedule SA

Additions

Line 3 All taxes measured by income deducted to arrive at federal taxable income

Enter all taxes measured by income, including income taxes, franchise or privilege taxes measured by income (paid to any taxing authority including a foreign country) to the extent such taxes were deducted to arrive at federal taxable income.

Line 4 North Dakota depreciation adjustment

North Dakota income tax statutes did not allow for the use of ACRS depreciation on assets placed in service between January 1, 1981 and the end of the 1982 tax year. These assets must be depreciated using methods allowed under the Internal Revenue Code provisions in effect as of December 31, 1980. Federal taxable income must be adjusted for the difference in these two methods. Enter the

amount of ACRS depreciation deducted on the federal return for these assets for the current taxable year.

Include depreciation on all currently held assets which were placed in service between January 1, 1981 and the end of the 1982 tax year, **not** just such assets which are located within North Dakota.

In computing this adjustment, exclude safe harbor lease assets.

Line 6 Other additions

The safe harbor lease provisions in Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, were not adopted in North Dakota in those instances where the minimum investment by the lessor is less than one hundred percent (100%). Enter amounts on line 6, as follows:

- Seller/Lessee: sale proceeds, rent expense, amortization expense, lease acquisition cost.
- Buyer/Lessor: interest expense, depreciation expense, amortization expense, acquisition cost, loss on sale of property.

Additional information regarding this adjustment is contained in N.D.C.C. § 57-38-01(3)(a).

Subtractions

Line 8 Tax refunds received in year 2002

Enter all income, franchise or privilege tax refunds received in 2002, to the extent such taxes were previously included in North Dakota taxable income.

Federal income tax refunds received cannot be included on line 8. See General instructions, Amended returns/federal audit changes.

Line 10 North Dakota depreciation adjustment

Enter the amount of depreciation computed for the current taxable year on assets placed in service between January 1, 1981 and the end of the 1982 tax year, using methods allowable as of December 31, 1980. (See instructions for line 4 for further explanation).

Include depreciation on all currently held assets which were placed in service between January 1, 1981 and the end of the 1982 tax year, **not** just such assets which are located within North Dakota.

In computing this adjustment, exclude safe harbor lease assets.

Lines 11 and 12 Allocated income and related expenses

Enter on line 11 all nonbusiness income and enter related expenses on line 12. The method used to attribute expenses to nonbusiness income must fairly distribute all of the corporation's deductions to all of its various types of income.

If an entry is made on this line, all of the following must be attached to Form 40:

- A worksheet showing each type of income or loss item allocated and its amount;
- Documentation showing the state to which the item of income or loss was allocated (*a copy of the other state's tax return is preferred*); and
- A narrative explaining the reasons for allocating each item of income or loss.

Line 15 North Dakota domestic dividend exclusion

Dividends received by the corporation are not taxable in North Dakota if the dividends are received from a corporation which has paid North Dakota corporation income tax pursuant to N.D.C.C. ch. 57-38, or from a bank, trust company or building and loan association which has paid tax pursuant to N.D.C.C. ch. 57-35.3.

If the payor corporation's entire federal taxable income was subjected to North Dakota taxation, the full amount of the dividends may be subtracted on this line. If the payor corporation is an apportioning corporation, the deduction is computed by multiplying the dividends received by the payor corporation's North Dakota apportionment factor.

Line 16 Other subtractions

If the amount on Form 40, page 1, line 1 includes any gain, either ordinary or capital, from property subjected to eminent domain sale or transfer, such gain is not taxable and must be entered on this line.

Section 168(f)(8) of the Internal Revenue

Code of 1954, as amended, was not adopted in North Dakota in those instances where the minimum investment by the lessor is less than one hundred percent (100%). Enter amounts as follows:

- Seller/Lessee: interest income and depreciation expense [*for assets placed in service between January 1, 1981 and the end of the 1982 taxable year; use methods allowed under the Internal Revenue Code as of December 30, 1980; for assets placed in service after the 1982 taxable year, use ACRS depreciation*].
- Buyer/Lessor: rental income.

Regulated investment companies, as defined by the Internal Revenue Code, will be allowed to subtract on this line certain dividends paid to shareholders. The dividends paid must be attributable to income that is taxable under N.D.C.C. ch. 57-38 when the regulated investment company earns the income.

Specific instructions for Schedule FTD

Use the line instructions that apply to the filing method box that is checked on Form 40, page 1, line 1.

Corporations filing a consolidated North Dakota return must complete Schedule CR, Part III (do not complete Schedule FTD) and refer to the instructions below for the "Combined Report Method."

Single Corporate Entity (Box a - Form 40, page 1, line 1)

A corporation filing as a single corporate entity for **both** North Dakota and federal purposes must complete lines 1, 1a, 1b, 4, 5, 6, 7, 8, 9, 10, 11 and 17.

A corporation filing as a single corporate entity for North Dakota purposes **and** included in a consolidated Federal Form 1120 must complete lines 1-11 and 17.

Line 1 Federal income tax liability

Enter the federal income tax liability from the federal income tax return filed with the IRS as follows:

- If Federal Form 1120 was used, enter the amount from line 31;
- If Federal Form 1120-A was used, enter the amount from line 27.

Cooperatives or other business organizations using federal forms other than Federal Form 1120 must enter the federal tax liability from the appropriate form.

Line 1a Federal alternative minimum tax liability

Enter the amount of Federal Alternative Minimum Tax (AMT) which has been included on line 1. Federal AMT is disallowed in computing the North Dakota Federal Income Tax Deduction because income which created federal AMT is not a part of North Dakota taxable income.

Disallowed federal AMT is carried forward and may be recaptured in future tax periods. For more information see Schedule AMT-R.

Line 2 Separate company(ies) federal income tax liability

Enter the federal income tax liability as computed on the corporation's pro forma separate company return. Attach a worksheet supporting this computation.

Line 3 Profit companies federal income tax liability

Enter the total pro forma separate company federal income tax liabilities for all corporations included in the consolidated federal return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Attach a worksheet supporting this computation.

Line 4 Ratio

Enter 1.000000 if filing as a single corporate entity for both North Dakota and federal purposes.

Line 6 Federal taxable income

Enter the amount from Form 40, line 1.

Line 7 Income not taxed to North Dakota

Enter the income (*before apportionment*) included on line 6 not taxable to North Dakota, such as interest on U.S. obligations and income allocated outside North Dakota.

Line 11 North Dakota apportionment factor

Enter the apportionment factor from Form 40, line 5, and proceed to line 17.

Combined Report Method (Boxes b, b1, and b2 - Form 40, page 1, line 1)

The following line instructions apply to:

- Corporations filing a combined return and checking box b on Form 40, line 1 (using Schedule FTD);
- Corporations filing a consolidated return and checking either box b1 or b2 on Form 40, line 1 (using Schedule CR, part III).

If a corporation tax return includes income from more than one federal tax return, a separate pro forma Schedule FTD must be completed for each corporation that filed a federal tax return.

The amounts on lines 1, 1a, 1b, 5, 6, 10 and 11 from the separate pro forma Schedule FTD's must be aggregated and the totals entered on the appropriate lines on the corporation's Form 40.

Line 1 Federal income tax liability

Enter the federal income tax liability from the federal income tax return filed with the IRS as follows:

- If Federal Form 1120 was used, enter amount from line 31;
- If Federal Form 1120-A was used, enter the amount from line 27.

Cooperatives or other business organizations using federal forms other than Federal Form 1120 must enter the federal tax liability from the appropriate form.

Line 1a Federal alternative minimum tax liability

Enter the amount of Federal Alternative Minimum Tax (AMT) which has been included on line 1. Federal AMT is disallowed in computing the North Dakota Federal Income Tax Deduction because income which created federal AMT is not a part of North Dakota taxable income.

Disallowed federal AMT is carried forward and may be recaptured in future tax periods. For more information see Schedule AMT-R.

Do not complete lines 2 and 3, and enter 1.000000 on line 4 if:

- **A consolidated federal return is not filed; or**
- **A consolidated federal return is filed in which all companies included in the consolidated federal return are included in the unitary group.**

Line 2 Separate company(ies) federal income tax liability

Enter the separate company pro forma federal income tax liability for all of the unitary corporations which are included in the consolidated federal return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Attach a worksheet supporting this computation.

Line 3 Profit companies federal income tax liability

Enter the total pro forma separate company federal income tax liabilities for all corporations included in the consolidated federal return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Attach a worksheet supporting this computation.

Line 6 Federal taxable income

Enter the total federal taxable income for all unitary corporations whose income is included in the Federal Form 1120. Attach a worksheet supporting this computation.

Line 7 Income not taxable to North Dakota

Enter the income (*before apportionment*) included on line 6 not taxable to North Dakota, such as interest on U.S. obligations and income allocated outside North Dakota.

Line 11 North Dakota apportionment factor

If a foreign tax credit is not claimed on the federal income tax return, enter the apportionment factor from Form 40, page 1, line 5, and proceed to line 17.

Corporations filing a consolidated state return enter the factors from Schedule CR, part II, line 14 on Schedule CR, part III, line 11.

If a foreign tax credit is claimed on the federal income tax return, skip line 11 and go to line 12.

Line 13 Total income

"Total income" is federal taxable income of those corporations which are included in the unitary group and are required to file a federal income tax return, plus or minus the adjustments (*before apportionment*) provided in N.D.C.C. § 57-38-01.3, except for the federal income tax deduction. Use the

worksheet below to compute the total income to be entered on line 13, or Schedule CR, part III, line 13.

1. Federal taxable income
(Schedule FTD, line 6) _____
2. Total additions (page 1,
line 2) _____
3. Total subtractions (page 1,
line 3) _____
4. Subtotal (Add lines 1
and 2, subtract line 3) _____
5. Net intercompany adjust-
ments in lines 2 & 3 _____
6. Total income (Subtract
line 5 from line 4. Enter
here and on Schedule FTD,
line 13, or Schedule CR,
Part III, line 13) _____

Line 14

Income relating to Foreign Tax Credit

Enter the total taxable income from sources outside the U.S., **after** loss recapture as computed on Federal Form(s) 1118, part II, Schedule B or Federal Form(s) 5735.

Water's Edge Method

(Box c - Form 40, page 1, line 1)

A corporation electing the water's edge method **cannot** claim a federal income tax deduction. Do not complete Schedule FTD and enter zero on Form 40, page 1, line 9.

Other

(Box d - Form 40 page 1, line 1)

A corporation which has checked the box entitled "Other" on Form 40, line 1, should contact the Office of State Tax Commissioner for specific instructions. Based on the instructions from the Office of State Tax Commissioner, attach a worksheet supporting the computations.

Specific instructions for Schedule AMT-R

Corporations filing a consolidated state return and checking box b1 or b2 on Form 40, line 1, must complete Schedule CR, part IV (*do not complete Schedule AMT-R.*)

North Dakota Schedule AMT-R is used to compute the recapture and carryforward of Federal Alternative Minimum Tax (AMT) which has been disallowed. Federal AMT may be recaptured only if:

- A federal credit for prior year minimum tax is claimed; and
- The recapture does not create or increase a North Dakota net operating loss.

The recapture of federal AMT disallowed in prior period(s) is used to reduce the current year's North Dakota income on Form 40, page 1 or part I of North Dakota Schedule CR (*for corporations filing a consolidated state return.*)

Any portion of the disallowed federal AMT remaining after 2002 may be carried forward and used to reduce North Dakota income in future years when a federal credit for prior year minimum tax is claimed.

For specific line instructions, see Schedule AMT-R, or Schedule CR, part IV (*for corporations filing a consolidated state return.*)

Specific instructions for Schedule TC

Lines 1 and 2

Contributions to nonprofit private colleges and high schools

Tax credits are available for making contributions to qualifying nonprofit private institutions of secondary and higher education located in North Dakota (*including the North Dakota Independent College Fund*). Contributions do not qualify unless they are made directly to, or are specially designated for the exclusive use of, a qualifying institution. A contribution to an account, fund or entity benefiting both qualifying and nonqualifying institutions does not qualify for the credit. The credits are available if the contribution(s) are made by the due date of this return, including extensions.

The tax credit for contributions made to all eligible schools in **each** category of institution is equal to the lesser of:

- 50% of the contributions but not to exceed 20% of the total tax liability;
- \$2,500.

Enter on line 1 the tax credit computed for contributions to nonprofit private institutions of higher education (*and the North Dakota Independent College Fund*) and enter on line 2 the tax credit computed for contributions to nonprofit private institutions of secondary education.

For each contribution, attach a copy of a receipt from the nonprofit private institution or a cancelled check (front and back).

Line 3

Venture Capital Corporation credit

A corporation may be entitled to a tax credit for investments made in a North Dakota venture capital corporation. The credit is limited to 25% of the amount invested or \$250,000, whichever is less. If the amount of the credit exceeds the corporation's state tax liability for that taxable year, the credit may be carried forward for up to seven years.

The corporation income tax credit for investments made in a North Dakota venture capital corporation is **NOT** allowed for investments made after February 28, 1991 in a venture capital corporation organized before January 1, 1989, which invested in a business or an affiliate of a business that owned tax-exempt securities.

A copy of the Venture Capital Corporation Investment Reporting Form must be attached to Form 40 in the initial year the tax credit is claimed.

For additional information regarding this credit, contact the Office of State Tax Commissioner.

Line 4

North Dakota Small Business Investment Company credit

If the corporation made a qualifying investment in the North Dakota Small Business Investment Company, enter 25% of the amount invested. If the credit exceeds the amount of the current tax liability, the excess may be carried forward up to seven years.

Attach a copy of the North Dakota SBIC Investment Reporting Form.

For additional information regarding this credit, contact the Office of State Tax Commissioner.

Line 5

Geothermal, solar or wind energy device credit

If the corporation is claiming this credit for a device installed before January 1, 2001, on property owned by the taxpayer, the tax credit is allowed for three years and is computed at 5% of the actual cost of acquisition and installation of the device.

The credit for devices installed after December 31, 2000, is equal to three percent of the installation cost, each year for five years. The device must be installed in North Dakota on property owned or leased by the taxpayer. This tax credit is limited to devices installed before January 1, 2011.

For devices installed after December 31, 2000, by pass-through entities (partnerships, Subchapter S Corporations, and Limited Liability Companies) the tax credit must be passed through to partners, shareholders, or members in proportion to their respective interests in the pass-through entity.

Attach a worksheet substantiating date of purchase, actual cost of acquisition and installation, and computation of the tax credit.

Line 6 Credit for employing the developmentally disabled or chronically mentally ill

A corporation may claim a tax credit for a portion of North Dakota wages paid to a developmentally disabled or chronically mentally ill employee. The tax credit is 5% of up to \$6,000 in wages paid to each such employee during the first twelve months of employment. The credit may not exceed 50% of the total tax liability. Only North Dakota wages actually paid during the taxable year may be considered for the tax credit. If this credit is claimed, attach an affidavit listing the

amount of wages paid, the name, and the social security number of each employee.

Line 7 Research and experimental expenditures credit

A corporation which invests in research and experimental expenditures within North Dakota is entitled to a tax credit. The tax credit is determined by subtracting the base period research expenses (*as defined in Section 26 U.S.C. 41(c) of the Internal Revenue Code of 1986, as amended*) which are applicable to North Dakota from the qualified research expenses made in North Dakota, and applying the following rates to the resulting difference:

- 8% on the first \$1,500,000;
- 4% on the excess over \$1,500,000.

If the tax credit exceeds the current income tax liability, any unused tax credit may be carried back for three years and then carried forward for up to fifteen years.

Line 8 New industry credit

A corporation which has been incorporated in North Dakota for the first time after January 1, 1969, and which is not the result of a business reorganization or acquisition, or any out-of-state corporation that has received a certificate of authority to transact business in North Dakota for the first time after January 1, 1969, may be entitled to a tax credit. This tax credit is available only for new enterprises engaged in assembling, fabricating, manufacturing, mixing, or processing any agricultural, mineral, or manufactured

products or any combination thereof. However, a corporation which is receiving any property tax or income tax exemption allowed by N.D.C.C. chs. 40-57 or 40-57.1 shall not be allowed this credit.

The tax credit is computed as a percentage of the annual gross amount expended by the corporation for salaries and wages within North Dakota. The following percentages apply:

- 1% for each of the first three taxable years a corporation qualifies for the tax credit;
- .5% for each of the fourth and fifth taxable years a corporation qualifies for the credit.

Attach a worksheet substantiating date of incorporation or initial authority to transact business in this State, annual gross amount of salaries and wages within this State and type of business activity.

Line 9 Credit for payment to a certified nonprofit development corporation

A tax credit is available to a corporation which invests in a certified nonprofit development corporation. The maximum tax credit allowed is 25% of the total investment, not to exceed \$2,000. Any unused credit may be carried forward for up to seven years.

Line 10 Renaissance zone credits

If a corporation is claiming a tax credit as a result of the Renaissance Zone Act, enter total amount of credits from the summary part of Schedule RZ. Contact the Office of State Tax Commissioner for Schedule RZ.

North Dakota estimated income tax for corporations for the 2003 taxable year

General instructions

Who must pay estimated tax

Estimated income tax must be paid if a corporation's net income tax liability can reasonably be expected to exceed five thousand dollars (\$5,000) for the taxable year and the previous year's income tax liability exceeded five thousand dollars (\$5,000).

"Net tax liability" is defined as North Dakota income tax due, as shown on the return, computed after the application of allowable credits and before the application of estimated income tax payments.

Where to file

Estimated income tax payments should be mailed to the Office of State Tax Commissioner, 600 East Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599.

Which form to use

If payment for estimated income tax is to be made by check or money order, the Form 40-ES voucher must be used to ensure that proper credit for the payment is applied to the correct account.

If payment is to be made using the Automated Clearing House (ACH) credit procedures, do not use the Form 40-ES voucher.

Time for filing

The first estimated income tax payment is due no later than April 15 following the close of the calendar year.

Corporations reporting on a fiscal year basis must pay the first estimated tax installment no later than the 15th day of the fourth month following the close of their fiscal year.

No less than one-fourth of the estimated income tax must be paid with the first installment, and with each of the three remaining installments on the 15th day of the sixth and ninth months of the taxable year, and the first month of the following year.

Extension of time to pay estimated tax cannot be granted.

How to pay

Do not commingle estimated income tax payments with any other payment to the North Dakota Office of State Tax Commissioner.

If payment for estimated income tax is to be made by check or money order, make it payable to North Dakota State Tax Commissioner.

Payment for estimated income tax may be made by electronic funds transfer. Information regarding electronic payments can be found on the department's Web site at www.ndtaxdepartment.com, under Corporate Income, Electronic Filing.

Amendments to estimated income tax

If it is found that the total estimated income tax is more or less than originally determined, amend the next installment.

Overpayment of estimated tax

An overpayment of estimated income tax from the prior taxable year may be credited to the current year's estimated payments. The amount of the 2002 overpayment will be applied to the first installment for 2003, unless the corporation elects another installment on Form 40, page 1, line 22a.

Application of estimated income tax payments

All payments submitted as 2002 estimated income tax and any overpayment credited from the 2001 taxable year must be reported on the 2002 North Dakota Corporation Income Tax Return Form 40.

Understatement of estimated income tax

Except for income computed using the federal annualization method or income qualifying as recurring seasonal income, interest charges will apply if the estimated income tax payment for any quarter (including overpayment credits from prior quarters) is less than 90% of the quarterly income tax liability or is less than the prior year's North Dakota income tax liability divided by four.

The Underpayment of Estimated North Dakota Income Tax by Corporations Form 40-UT must be attached to the North Dakota Corporation Income Tax Return, Form 40 when filing. The Form 40-UT is located within the Form 40 booklet.

Interest

The State Tax Commissioner will notify the taxpayer of any interest owed on any underpayment of estimated income tax. If desired, interest owed may be computed by the taxpayer on Form 40-UT and added to the 2002 corporation income tax liability on Form 40, Page 1. Interest is calculated at the rate of 12% per year from the installment due date to the earlier of the date the estimated tax is paid or the due date (without extension) of the return.

Exceptions

If the estimated tax paid on or before each due date is computed using the annualization method provided in the Internal Revenue Code of 1986, as amended, no interest is due. Also, no interest is due if the underpayment of any installment comes within the exception provided in the Internal Revenue Code of 1986, as amended, Section 6655(e) for income qualifying as recurring seasonal income.

Form 40-ES North Dakota Office of State Tax Commissioner
Estimated tax payment voucher — corporation

2003
1st Installment
 Due 15th day of fourth
 month of 2003 taxable year.

☐ Calendar year: January 1 through December 31, 2003

☐ Fiscal year beginning _____, 2003, and ending _____

Name as shown on North Dakota corporation income tax return

FEIN

-

Mailing address

Amount of Payment \$

City, state and zip code

For Tax Department use only

- Do not use this voucher if paying by means of an Automated Clearing House (ACH) credit.
- Make check or money order payable to "North Dakota State Tax Commissioner"
- Mail to: Office of State Tax Commissioner, 600 East Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599